

R. WADE HOLDER ET AL.

IBLA 78-229

Decided May 22, 1978

Appeal from decision of the California State Office, Bureau of Land Management, rejecting untimely filed notices of mining claim recordation. CAMC 8737.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744(b) (West Supp. 1977) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to make a timely filing of the notice requires that the Bureau refuse to accept the notice and declare the claim to be null and void.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This is an appeal from a decision dated January 11, 1978, of the California State Office, Bureau of Land Management (BLM), refusing to

accept for filing certain mining claims 1/ because of noncompliance with 43 CFR 3833.1-2(b) which provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

Appellants' claims were located on September 9, 1977, but the notices of location were not filed with BLM until December 9, 1977, more than 90 days later.

In their statement of reasons appellants explain that the notices of location were mailed to the BLM's Sacramento Office on December 6, 1977, but were not received there until December 9, due to the probability of "a missort in the post office." Appellants feel that they made a conscientious effort to comply with the recordation regulation and that the delay should be excused.

[1] The Board has several times held that a mining claim located after October 21, 1976, for which a notice of recordation required to be filed by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (West Supp. 1977), has not been filed within 90 days from the date of location, is void, and no force and effect can be given to a notice of recordation filed after the 90-day period. Northwest Citizens For Wilderness Mining Co., Inc., 33 IBLA 317 (1978); Southwest Exploration Associates, 33 IBLA 240 (1977). The FLPMA, supra, and the regulations which implement it contain no provisions allowing for a waiver of the 90-day requirement or for the granting of extensions. On the contrary, the consequences of failing to timely file notices of location are clearly stated in 43 CFR 3833.4(a): "The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claims, mill site, or tunnel site and it shall be void." Since there is no authority for an exception to enforcement of the 90-day deadline, it must be enforced. See Belton E. Hall, 33 IBLA 349 (1978).

1/ The claims involved are Pacific Association Placer Claim Nos. 34, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, and 51, situated in Trinity County, California.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

